

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JEREMY N. TRANSUE
Claimant

VS.

SPRINGFIELD GROCER CO., INC.
Respondent

AND

AMERISURE MUTUAL INSURANCE CO.
Insurance Carrier

Docket No. 1,021,246

ORDER

Respondent and its insurance carrier (respondent) request review of the September 28, 2005, preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

The Administrative Law Judge (ALJ) found that jurisdiction of this case exists in Kansas and authorized one of two doctors to determine causation and treat claimant's shoulder condition.

Respondent requests review of the ALJ's finding that jurisdiction of this case exists in Kansas. Respondent contends that the only basis upon which jurisdiction could be found in Kansas would be if there was a Kansas contract of hire or if claimant's principal place of employment was in Kansas. Respondent maintains that claimant was hired and injured in Missouri and his principal place of employment was in Missouri.

Claimant argues that jurisdiction was properly found to exist in Kansas because there was a Kansas contract of hire. Claimant also contends that his employment was principally in Kansas, he reported to a Kansas location to begin and end work, and the majority of his contact with respondent occurred in Kansas.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant testified that he saw an advertisement in the Kansas City Star newspaper for a position as a driver with respondent. Claimant stated he went for a preliminary interview and a pre-screening meeting at a hotel in Lee's Summit, Missouri. Claimant testified that after attending this pre-screening meeting, he was asked by respondent to go to Springfield, Missouri, for an interview and a drug test. After the interview and taking the drug test, claimant returned to his residence in Kansas. He stated that after the drug test results came back, respondent called him at his residence in Kansas and offered him the position, which he accepted.¹ Claimant testified that he reported to work for respondent the next day to a Penske lot in Kansas City, Kansas.

Claimant stated that every day he reported to work at the Penske lot in Kansas City, Kansas. He picked up his truck at that location and returned his truck there. He also did his pretrip and post-trip inspections of the truck at that location. Claimant made deliveries in both Kansas and Missouri. Respondent's truck reconciliation records show that approximately 25 percent of the deliveries made on claimant's route were made in Kansas, and the rest were made in Missouri.² His route instructions were in the truck when he picked it up, and his paychecks were delivered to him in Kansas. Respondent withheld Kansas taxes from his paycheck.

On October 19, 2004, while making a delivery in Lee's Summit, Missouri, claimant fell from the back of a semi trailer, injuring his back and right shoulder.

Robert Whittemire is Director of Operations for respondent. He testified he was involved in the hiring of claimant. Mr. Whittemire testified that the pre-screening interview for the position was held at a hotel in Lee's Summit, Missouri, and claimant's final interview was held in Springfield, Missouri. Mr. Whittemire stated that after he and claimant talked, he offered claimant the position and claimant accepted the offer during the interview in Springfield, Missouri. After claimant accepted the position, he was sent to have a Department of Transportation physical and a drug test, which was performed in Springfield, Missouri, and was paid for by respondent. After receiving the results of the drug test, claimant was contacted by telephone at his home in Kansas by someone from respondent to schedule his first day of work. Mr. Whittemire testified that if claimant had failed the drug test, he would have been terminated.

¹ See *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975); *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, 512 P.2d 438 (1973).

²Whittemire Depo., Ex. 14.

K.S.A. 44-506 states in part:

[T]he workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state

The Board first finds that claimant's place of employment was Missouri. The record shows that the majority of his stops and the majority of his driving was done in Missouri.³

Second, the Board finds that the contract of employment was made in Missouri. Claimant completed all of the necessary paperwork for employment and agreed to work for respondent at the Springfield, Missouri, meeting. His continued employment was conditioned upon successfully completing those tests, but this was a condition subsequent. The contract had been formed. Although it was a conditional contract of hire, it was nonetheless a contract.⁴ Accordingly, jurisdiction for this claim does not lie in Kansas.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated September 28, 2005, is reversed.

IT IS SO ORDERED.

Dated this _____ day of December, 2005.

BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant
Michelle Daum Haskins, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ See *Knelson v. Medowlanders, Inc.*, 11 Kan. App. 2d. 696, 732 P.2d 808 (1987).

⁴ See *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 3 P.3d 551 (2000).